

Message Text

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FM AMEMBASSY SAN SALVADOR

TO SECSTATE WASHDC 3909

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E.O. 11652: N/A

TAGS: PGOV, EINV, ELTN, ES

SUBJECT: INTERNATIONAL RAILWAY OF CENTRAL AMERICA (IRCA)

REF: STATE 35885

1. SHORT ANSWERS TO QUESTIONS POSED REFTEL ARE AS FOLLOWS.
IRCA HAS SOUGHT NO REPEAT NO LEGAL REMEDIES FOR COMPENSATION.
GOES HAS TAKEN NO REPEAT NO ACTION TO DISCHARGE ITS OBLIGATIONS
UNDER INTERNATIONAL LAW WITHIN THE MEANING OF TITLE V OF THE
TRADE ACT. LONGER ANSWERS ARE AS FOLLOWS.

2. IRCA'S SALVADORAN LAWYER, GUILLERMO TRIGUEROS, INFORMED
EMBASSY IRCA HAD MADE NO ATTEMPT SEEK LEGAL REMEDY THROUGH
SALVADORAN COURTS. AS PREVIOUSLY REPORTED (AND CNADIDLY LAID
OUT BY TRIGUEROS) THERE ARE THREE REASONS FOR THIS: LEGAL,
TACTICAL AND FINANCIAL.

3. TRIGUEROS CONTINUES TO MAINTAIN THAT, UNDER SALVADORAN
LAW, NO RECOURSE IS OPEN TO IRCA THROUGH SALVADORAN COURTS.
IRCA'S LOSS OF CONCESSION AND TRANSFER OT IFS PHYSICAL
ASSETS TO GOES WAS ACCOMPLISHED BY LEGISLATIVE DECREE. TRIGUEROS'
VIEW IS THAT THIS ACTION WAS UNCONSITUTIONAL, CONTRAVENING
SECTION 138 OF SALVADORAN CONSTITUTION, WHICH REQUIRES IN-
DEMNIFICATION IN CASE OF EXPROPRIATION. HOWEVER, ACCORD-
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ING TRIGUEROS, ONLY MANNER IN WHICH A LEGISLATIVE
DECREE CAN BE CHALLENGED IS BY INSITUTING "RPOCESO DE INCON-
SITUCIONALIDAD" (WRIT OF UNCONSTITUTIONALITY) BEFORE
SUPREME COURT. HOWEVER, ACCORDING ART. 2 OF SALVADORAN
LAW OF CONSTITUTIONAL PROCEDURES, ONLY SALVADORAN CITIZENS
MAY BRING SUCH A CASE. THUS, SAYS TRIGUEROS, IRCA'S OWNERS
WOULD HAVE TO FIND A SALVADORAN CITIZEN TO BRING

THE CASE FOR THEM (EVEN THIS MAY NOT BE LEGALLY POSSIBLE, ACCORDING INFORMATION IN FILES). TRIGUEROS SAYS THAT NO PROPERLY PATRIOTIC AND REASONABLY PRUDENT SALVADORAN, LEAST OF ALL HIMSELF, WOULD DO THIS. ALSO, TRIGUEROS WHO IS FOREIGN MINISTRY LEGAL ADVISOR, MAY HAVE SOME CONFLICTS OF INTEREST IN THIS CASE.

4. FURTHER, ACCORDING TRIGUEROS, EVEN IF IRCA COULD GET HEARING, NO SALVADORAN COURT WOULD FIND AGAINST GOES IN THIS CASE. LEGISLATIVE DECREE WHICH ASSUMED PROPERTY OF IRCA WAS REVIEWED IN ROUTINE MANNER BY SUPREME COURT. IF IRCA LOST IN COURT, ITS CASE WOULD BE WEAKENED. IRCA'S BEST CHANCE TO OBTAIN COMPENSATION IS FOR THE USG TO TAKE UP ITS CASE THROUGH DIPLOMATIC CHANNELS. COMMENT. WHILE GOES MIGHT OBJECT TO DIPLOMATIC APPROACH ON CALVO DOCTRINE GROUNDS, TRIGUEROS APPARENTLY BELIEVES GOVERNMENT WOULD BE WILLING TO COMPROMISE "OUT OF COURT". HE SUGGESTED USG APPROACH TO INCOMING ROMERO GOVERNMENT.

5. TRIGUEROS FEE IS CONTINGENT UPON IRCA'S OBTAINING COMPENSATION. 25 PERCENT OF NOTHING IS NOTHING AND TRIGUEROS IS UNLIKELY VIGOROUSLY PURSUE ANY LINE WHICH APPEARS UNLIKELY PRODUCE RESULTS. HE REFERRED TO HIS CLIENTS SOMEWHAT CAVALIERLY AS "LITTLE OLD MEN" (VIEJITOS) WHO ARE UNWILLING TO SPEND MONEY TO GET WHAT THEY WANT.

6. GOES POSITION HAS BEEN AND STILL IS THAT IRCA HAS RECOURSE THROUGH SALVADORAN COURTS. (HOWEVER, SUBSECRETARY OF FOREIGN AFFAIRS, WHO IS LAWYER, DID ACKNOWLEDGE TRIGUEROS POINT THAT LIMITED OFFICIAL USE

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ONLY SALVADORAN CDDIZENS COULD INSTITUTE "PROCESO DE INCONSTITUCIONALIDAD" AND CONCEDED THIS APPEARED TO PRESENT CATCH 22 SITUATION AS FAR AS PROTECTION OF CONSTITUTIONAL RIGHTS OKFOREIGNERS ARE CONCERNED. HE IS INVESTIGATING FURTHER.) GOES DOES NOT SEE NEED FOR ANY ACTION ON ITS PART TO MEET ITS OBLIGATIONS UNDER INTERNATIONAL LAW BECAUSE IT CONSIDERS THOSE OBLIGATIONS TO BE MET. IT SHOULD BE NOTED HERE THAT, AS GOES SEES LEGAL POSITION, CANCELLATION OF IRCA CONCESSION CAUSED BY IRCA'S PHYSICAL ASSETS TO REVERT TO GOES UNDER TERMS OF CONCESSION ITSELF, THAT IS, "WITHOUT ANY REMUNERATION OF INDEMNIFICATION", AS IF CONCESSION HAD EXPIRED NORMALLY AT END OF 99 YEAR TERM. THUS GOES COULD ARGUE THAT NO EXPROPRIATION TOOK PLACE.

7. RE LEGAL QUESTION OF IRCA ACCESS TO LOCAL COURTS, EMBASSY UNABLE OFFER DEFINITE JUDGEMENT BUT BELIEVES IRCA HAS RECOURSE, THOUGH POSSIBLY NOT THAT OF CHALLENGING CONSTITUTIONALITY OF LEGISLATIVE DECREE. ACTION IN LOWER COURT SEEKING COMPENSATION ON BASIS OF BREACH OF CONTRACT

MAY BE A POSSIBILITY. WE WILL CONTINUE INVESTIGATE AND
REPORT ANY NEW INFORMATION DEVELOPED.

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